that sulfathiazole is capable of curing at least 80 per cent of all gonorrheal infections. The remaining 20 per cent, he said, may be cured by another course of treatment with the same drug, or by other special methods.

Cautioning against self-diagnosis and self-treatment, the surgeon general warned that sulfathiazole is safe only if taken under a doctor's orders and under close medical observation.

"If the amount taken is not carefully adjusted," he said, "the drug can cause nausea, dizziness, fever and rash. Worse still, self-dosing with this drug may do such serious damage to the liver and blood cells that the patient never completely recovers. Only under the doctor's direction is the drug safe to use."—San Francisco *Examiner*, April 7.

Dr. Daniel Crosby Takes Over Alameda Post

Dr. Daniel Crosby has been appointed to fill the unexpired term of the late Dr. Charles A. Dukes on the Alameda County Institutions Commission by the Alameda County Board of Supervisors. He will serve until July 1, 1945.—San Francisco *Chronicle*, March 24.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

Practicing Without a License: Criminal Responsibility and Civil Responsibility

PART I—CRIMINAL RESPONSIBILITY

It is an almost universal requirement that an individual be possessed of a certificate or license issued by duly constituted authority before he may lawfully engage in the practice of medicine and surgery. In most jurisdictions, in order to insure compliance with this requirement, certain sanctions have been attached to practicing without such a certificate or license. In California, physician's and surgeon's certificates are issued by the Board of Medical Examiners and it is provided in *Business and Professions Code, Section 2141 that:*

"Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this chapter, is guilty of a misdemeanor."

Another section of the same code limits the use of the prefix "Dr.", or any other term implying that an individual is a physician or surgeon, to holders of certificates, and makes a violation of this condition a misdemeanor. Persons convicted of violating these or other sections of the Medical Practice Act are punishable by a fine of not less than $100 nor more than $600, or by imprisonment for a term of not less than sixty days nor more than one hundred eighty days, or by both such fine and imprisonment.

A statute as broad in scope as that quoted necessarily is subject to certain exceptions and limitations, some of which are set forth in the *Business and Professions Code.* A physician or surgeon from another state is not required to have a certificate while in actual consultation with a licensed physician or surgeon of this State if, at the time of the consultation, he is a licensed physician in the state in which he resides. He may not, however, open an office or appoint a place to meet patients or receive calls in California. Students regularly matriculated in a medical school approved by the Board of Medical Examiners may treat the sick and afflicted if they receive no compensation for their services. And commissioned medical officers of the United States Army, Navy, Marine Hospital or Public Health Service are not required to have a State license to discharge their official duties.

The source of some litigation and dispute over proper construction has been the provision of Section 2144 that the license requirements of the Medical Practice Act (i.e., Business and Professions Code, Ch. 5) are not meant to prohibit "service in case of emergency." This section has been seized upon with little or no success by persons charged with practicing without a license as justifying the course of treatment alleged to constitute the offense with which they are charged. In *People v. Lee Wah* (1886), 71 Cal. 80, it was held that the mere fact that school physicians had given up a sick person as incurable did not create a case of emergency authorizing a person who had not procured a medical certificate to render him gratuitous medical services. The test was established by this case that "A case of emergency, within the meaning of the statute, is one in which the ordinary and qualified practitioners are not readily obtainable." This theory of the statute was reaffirmed in *People v. Cosper* (1926), 76 Cal. App. 601, the Court holding that where the uncontroverted evidence showed that arrangements had been made for the treatment of the patient by the defendant several days before the date he was called, and that a number of hours elapsed between the time when he commenced his treatment and the birth of a child to the patient, during which time there was ample opportunity to secure the services of a regularly licensed physician, there was no merit in the defendant's contention that the case was an emergency treatment within the exception found in the Medical Practice Act.

The Board of Medical Examiners is empowered to prosecute all persons guilty of violating the license requirement, and may employ special agents and investigators for the purpose of enforcing this and other provisions of the Medical Practice Act. Warrants directing the arrest of violators may be issued to these special agents in the same manner as warrants are issued to peace officers for the arrest of criminals, and the Attorney General of the State acts as legal counsel for the Board in all prosecutions.

In order to sustain a conviction under the section of the *Business and Professions Code* quoted above, the Board of Medical Examiners must establish the two elements of the offense, i.e., a course of action falling within practice of medicine or surgery as defined in the section, and secondly, the absence of a certificate duly issued by the Board. To constitute "practicing" the defendant must have treated or prescribed for the patient in the course of following a profession, business, or calling, and the mere gratuitous suggestion of a method of treatment, or as shown above, the rendering of services in time of emergency, will not justify prosecution. Diagnosis and treatment, or either alone, have been held to sustain a conviction. After establishing that the defendant has actually practiced medicine within the meaning of the statute, the Board is aided in is prosecution by the rule that, where the defendant alleges that he did have a license, the burden is upon him to prove this defense because his possession of a license is a matter peculiarly within his own knowledge.

The subject of civil responsibility for practicing without a license will be considered in a later article.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

For years health departments have embodied dental hygiene in their programs. I hazard the guess that no official health agency would claim that it has more than scratched the surface in this field. Before we can expect to get our dental programs on a basis where far reaching results can be anticipated, extensive and intensive scientific research is needed.—John L. Rice, M. D., *Commissioner of Health, New York City.*